

Japanese Universities' High Policy Implementability: The Introduction of the Japanese Law School System

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Abstract:

In Japan, education has often been used by the government as a means of introducing social change, due to its high policy implementability. The Japanese law school system is a good example to illustrate Japanese universities' high policy implementability because it was introduced when Japan needs numerous talented lawyers to operate a law-governed society. The idea of introducing a law school system was initiated by some pro-American law professors. They were concerned that no academic institution was responsible for legal professional education in Japan. Soon after, the Ministry of Education jumped at the opportunity. The ministry viewed the law school proposal as a suitable measure for advancing its education reform drive. Law professors, the most relevant stakeholders of the law school system, were reluctant about the law school proposal, but their low solidarity and the Ministry of Education's tight control made them too vulnerable to protest against the proposal. In addition, law professors in elite universities did not proactively oppose the law school proposal because they found it a good chance to crush the large number of lower-status law undergraduate faculties.

Introduction

The Ministry of Education¹ exerts significant power and influence over Japanese universities. This means that, in practice, Japanese universities have high policy implementability, that is a strong probability that ministry policies will be implemented. As a result, education has often been used by the government as a means of introducing social change. In fact, education reform played a central role in the last two social transformations in Japan. According to Schoppa (1991), in the Meiji era, primary education and a meritocratic system were institutionalized to nurture an educated and trainable workforce and talented elites when Japan needed to make maximum use of its human resources in its efforts to industrialize. Following World War II, a more democratic and egalitarian educational system was introduced when Japan needed skilled workers to power its post-war recovery. Today, American-style graduate law schools are being introduced when Japan needs numerous talented lawyers to operate a law-governed society. This paper explains Japanese universities' high policy implementability by describing the process of introducing a new law school

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¹ The Ministry of Education, Culture, Sports, Science and Technology

system.

Japanese legal education is currently experiencing a massive shift from undergraduate law faculties (*hougakubu*) to graduate-level professional law schools (*houka daigakuin*). Law had been taught at the undergraduate-level with an emphasis on theory, rather than practice. However, Japan has adopted an American-style law school system which consists of a graduate-level professional education, with some modifications. In 2004, 68 American-style professional graduate-level law schools opened for the first time in Japan's history, and 6 more opened in 2005. In March 2006, approximately 2,500 law school graduates with a Juris Doctoral (J.D.) degree started operating.

The law school system was established as a solution to the shortage of legal professionals, including lawyers, judges, and public prosecutors. In the late 1990s, the need for judicial reform became apparent in Japan, and substantial increases in the bar was considered a vital first step to enable the accomplishment of many other judicial reforms. One of major reasons why the law school system was selected is high policy implementability that Japanese universities possess.² To explain the high policy implementability, interests and forces behind the law school system will be focused in this paper, particularly from two aspects: the Ministry of Education and law scholars.

Research Methods

Methodologically, this research has two components. The first component is archival research examining the institutional environment of Japanese law schools. The archival data consists of 1) law journals, newspapers, and magazines; 2) publication of various key organizational actors, including the Ministry of Justice, the Supreme Court, the Japan Federation of Bar Associations, the Ministry of Education, business associations, and universities; and 3) minutes of governmental committees. The second component is the product of approximately 70 in-depth interviews with law professors, lawyers, ministry officials, and business leaders who are involved in the formation of Japanese law schools, as well as law school students. All of the interviews were conducted in Japan in the fall of 2003 and the summer of 2004.

This paper will consist of four parts. Part 1 describes the characteristics of the Japanese training system before and after the introduction of the law school system. Part 2 examines pro-law school scholars' interests. Part 3 illustrates the Ministry of Education's interests. Part 4 explains the vulnerability of the law scholars.

Changes in Legal Training System in Japan

The Previous Legal Training System

Prior to the introduction of the law schools in April 2004, Japanese legal training system looked quite different from the US system. Law was taught in undergraduate programs in Japan; however, this undergraduate education was not truly geared to preparing graduates for legal practice. Instead,

² Other reasons for the selection of the law school system are explained in my other paper (Saegusa, 2007).

Japan's undergraduate law faculties were important training grounds for governmental bureaucrats and business leaders (Miyazawa 2000). There was no educational requirement for taking the national bar examination in Japan.³ Unlike European countries, Japanese legal education was not directly connected to the national bar exam in terms of system and course content: the completion of undergraduate legal education was not a prerequisite for taking the bar exam. Those who aimed at becoming legal professionals usually prepared for the bar exam by attending bar examination preparatory schools (hereafter "prep schools") for several years after college. The national bar exam was extremely competitive. The number of successful candidates remained unchanged between 1960 and 1990 at approximately 500 per year. Since 1990, the number gradually increased to about 1,000 in 1999. In essence, the pass rate hovered at two or three percent. The lack of connection between the formal education and the bar examination and the very small number of successful candidates played their roles in disconnecting course content from the bar exam.

Those who passed the bar exam trained at the Legal Research and Training Institute (shihō kenshujyō), operated by the Supreme Court. The legal training was conducted over a total of one-and-a-half years (two years for legal apprentices who entered the Institute before 1998), consisting first of a period of coursework (three months), on-site training in a court, a prosecutors' office, and a law firm (nine months total), and a second period of coursework (three months). During the training, students received a stipend (about \$2,000 a month) from the government. One of the important functions of the legal training was screening. During the training, some students were selected to become judges or prosecutors, and those remaining became lawyers. Japan's legal education system was thus comprised of undergraduate law programs, a hyper-competitive bar exam, and mandatory legal training. And importantly, prep schools have played a major role in preparation for the exam.

New Legal Training System

Since the introduction of the law school system in 2004, Japan's legal training system has been transformed. In the new legal training system, a Juris Doctorate (JD) degree from a Japanese law school is a requirement for taking the bar exam.⁴ Those who aim at going to law schools need to take the Japanese-version of LSAT exam. The law schools have two different courses; a two-year course (*kishusha*) and a three-year course (*mishusha*). The two-year course is for graduates of an undergraduate law faculty or those who have equivalent legal knowledge. Each law school provides a law subjects exam for the two-year course candidates.⁵ Law school graduates take a new bar exam which started in 2006. The new bar exam is supposed to be constructed based on the law school curriculum. Since the existing bar exam remains until 2010, two different bar exams will coexist between 2006 and 2010. The passing rate of the new bar exam was originally targeted at 70-80% at

³ Not even a high school diploma was a requirement for the bar exam.

⁴ However, those who pass a by-pass exam will be qualified to take the bar exam. The number of those coming from the by-pass exam will be small.

⁵ Only the Omiya Law School does not offer the two-year course.

the policy-making level. However, because a large number of law schools were established, the passing rate was about 50% in the first year of the new bar exam and will drop down to 20-30% in the following years. The new bar exam passers are required to be trained at the Legal Training and Research Institute for one year. The trainees no longer receive a stipend. Undergraduate law faculties remain after the introduction of new law schools, although many universities decreased the size of their undergraduate law programs.

The Introduction of the Japanese Law School System

The law school system was selected as a means to substantially increase the number of legal professionals at the Justice System Reform Council (*shiho seido kaikaku shingikai*, hereafter “the Reform Council”). The law school proposal emerged in the late 1990s, just a few years before the Reform Council started in 1999. The rise of the law school proposal was seen as a rather sudden to many eyes. A law professor whom I interviewed described this “law school rhapsody”:

I experienced an American law school many years ago. But to import American law schools to Japan seemed to be just “non-sense.” It has been like that for a long time. But all of sudden, everyone talks about law schools today. This is crazy.

The idea of introducing U.S.-style law schools emerged out of discussions of legal education reform and university reform. The necessity of legal education reform was first pointed out when reform of the bar exam was discussed from the late 1980s to the mid-1990s. The issue of the quality of the bar exam candidates was seen as a problem with university legal education. Universities were blamed for not making enough efforts to lessen the gap between legal education and the bar exam, and the double-school problem was recognized as a serious matter.

Legal Education Reform: Pro-Law School Scholars’ Interests

The necessity of legal education reform began to be discussed by some scholars mentioning a law school system as the solution. In 1997, Koji Sato and Takeshi Sasaki, President of the University of Tokyo, were called for hearings of the Liberal Democratic Party Judicial System Special Committee.⁶ They both made a speech arguing that a law school system modeled on the United States would be the only solution in the long term for legal training education reform, together with substantial increases in the number of legal professionals (Endo, 2000). In 1998, Yukio Yanagida published papers on his law school proposal at *Jurist*, a national law journal. Yanagida was one of the first to discuss law schools. Based on his teaching experience at Harvard University, Yanagida, a lawyer, complained that no academic institution is responsible for legal professional education in Japan. Yanagida suggested that undergraduate law faculties should teach liberal

⁶ Sasaki was called for a hearing at the 2nd meeting of LDP Judicial System Special Committee on June 18, 1997, and Sato attended a hearing at the 6th meeting on November 11, 1997.

education exclusively⁷ and introduce graduate-level U.S.-style professional law schools for providing legal training education. Furthermore, the Legal Research and Training Institute should be abolished in his proposal. A few month after Yanagida's papers, at the Conference of National Nine Universities' Law Faculty Deans (*kokuritsu 9 daigaku hokeigakubucho kaigi*),⁸ Shigeaki Tanaka, a scholar of the philosophy of law, proposed a "Japanese-style" law school which includes one-year study on the third year at an existing undergraduate law faculty (skip the fourth year) and three-year studies at a new graduate-level professional law school.⁹

The Daini Tokyo Bar Association (*niben*) interviewed twelve universities about the law schools proposal in February 1999.¹⁰ The survey found that Tanaka's law school proposal was influential at the Conference of National Nine Universities' Law Faculty Deans. The survey also revealed that there was a high level of interest in the law school proposal among the twelve selected universities. However, with the exception of national elite universities and Waseda University (private elite), the rest of the universities had not begun seriously discussing their law school proposals yet at the time that interviews were conducted in February 1999.

Tanaka was a law faculty dean of Kyoto University at that time and presented his law school proposal at the centenary celebration symposium for the law faculty of Kyoto University in July 1999, a few weeks before the Reform Council began. This symposium was an important event in the discussion of the law school proposal. Ministry officials and law scholars from all over the country were invited to the symposium. One law professor described how the symposium changed the discourse on law schools:

Before the symposium, there was discussion on introducing a law school system, but we never thought it would happen. But Prof. Tanaka's speech on his law school proposal, together with Prof. Sato's comments on law schools and the Reform Council, was surprising. The symposium gave us an impression that law schools would be soon introduced to Japanese legal education.

This professor continued describing how his university responded to this sudden shift in the law school discourse:

As soon as we (he and two other professors of his university) came home from attending symposiums at Kyoto University and Osaka University (on the next day after the symposium at Kyoto), we started discussing our law school

⁷ Current undergraduate law faculty programs generally consist of the first year (sometimes the second year as well) liberal education and the three year specialized education.

⁸ National nine universities include former Imperial Universities (Tokyo, Kyoto, Tohoku, Hokkaido, Nagoya, Osaka, and Kyushu), and Hitotsubashi, and Kobe University.

⁹ His speech on "hoso yosei seido kaikaku to hogakubu/daigakuin no taiou." at June 4, 1998. See also Tanaka (1999a and 1999b).

¹⁰ The survey was conducted in February 1999. They interviewed law professors from 12 universities (Tokyo, Waseda, Keio, Kyoto, Chuo, Hitotsubashi, Jyochi, Meiji, Rikkyo, Gakushuin, Nihon, and Hosei) and most of them are elite universities, and besides Kyoto University, they are all located in Tokyo).

proposal and planning a symposium. To hold a symposium was important because it demonstrated our interest in establishing a law school to the Ministry of Education.

Beginning with the symposium at Kyoto University, many other universities -national and private- held symposiums on their law school proposals one after another during 1999 and 2000 (Endo, 2000; Watanabe et al., 2000).

Setsuo Miyazawa, a scholar of the sociology of law, also contributed to the discourse of the law school proposal. While Sato and Tanaka's ideas influenced the law school proposal through governmental committees, Miyazawa has been an advocate of the law school proposal in journals and through his network with the Daini Tokyo Bar Association. Miyazawa served as an editor for two journals specializing in judicial reform: *Gekkan Shiho Kaikaku* (Monthly Judicial Reform) from October 1999 to December 2002 and *Causa* (it means "trial" in Latin) from May 2002 to March 2004. Together with the Daini Tokyo Bar Association, Miyazawa established the Omiya Law School in 2004.

Among the interviews, many law professors pointed out the significant influence of Sato and Tanaka on promoting the law school proposal. A professor even called them "agitators." Sato became the chair of the Reform Council and Tanaka was also an active speaker at the Conference of National Nine Universities' Law Faculty Deans. Furthermore, they took the initiative in holding the Kyoto University's law school symposium. In these senses, Sato and Tanaka played major roles in facilitating the law school plan.

University Reform: the Ministry of Education's Interests

As soon as a law school proposal was initiated by some professors, the Ministry of Education jumped at the opportunity. The ministry viewed the proposal as an ideal start for their projected university reform of shifting the emphasis from undergraduate to graduate education and from academic to professional education. This initiative, begun in the 1990s, was spurred by to a declining birthrate¹¹ and the increasing legitimacy of US-style graduate schools.¹² In an interview, an officer of the ministry described the law school system as "the biggest project in university reform and the best in the professional education reform."

The Ministry of Education had begun to shift its emphasis from undergraduate to graduate and from academic to professional education since the 1990s. One of the reasons behind these shifts is the declining birthrate. Due to the declining birthrate, it is estimated that the number of 18 year-olds who aim at going to college and the capacity of two-year and four-year colleges would be the same

¹¹ It is estimated that the number of 18-year-olds who aim at going to college and the capacity of two-year and four-year colleges would be the same in 2009.

¹² Since Japan's graduate school system was not compatible with the global standard of graduate school systems, frequently influenced by the United States, many of those in academics and other professional occupations possessed second-rate credentials as compared to their international colleagues.

in 2009. Another reason is increasing legitimacy of U.S.-style graduate schools. Since Japan's graduate school system was not compatible with the global standard of graduate school systems which is often influenced by the United States, many of those in academics and other professional occupations possessed a lesser degree than their international colleagues and looked inferior in the international arena. The Ministry of Education first conducted the expansion of graduate schools including master's as well as Ph.D. programs. Because Japanese graduate schools have mainly served as training institutes for academics, the number of graduate students in the social sciences in particular, has been relatively small.¹³ In addition, because Japanese education was originally modeled on Germany, to receive a Ph.D. degree in the social sciences has often taken a few decades after the completion of coursework (*ronbun hakase*),¹⁴ whereas it generally takes less than a decade to receive a Ph.D. degree together with completing the coursework in the United States (*katei hakase*). The Ministry of Education has recently transformed the graduate school system from the German-style to the U.S.-style form. In this shift, the University of Tokyo made its law undergraduate faculty (*hougakubu*) a subordinate institution to its law academic graduate school (*hougaku kenkyuka*) in 1991 (*daigakuin jyutenka*) while the relationship was the reverse before. A year later, Kyoto University introduced the same change, and the other prestigious national universities followed this trend.

Secondly, the Ministry of Education introduced a graduate-level professional school system in October 1998.¹⁵ In the professional graduate school system, law was pointed out as a recommended area, together with business management as well as accounting and finance. At the same time, the ministry began to show its interest in reevaluating the legal education system. One of the law professors whom I interviewed pointed out "one incident" which might have made the Ministry of Education realize the necessity of legal education reform:

I think one reason for the rise of the law school proposal is that, at a committee of the Ministry of Education, a law professor of the University of Tokyo complained something like, "The double-school problem is outrageous. The fact that many of my students do not come to my lectures is humiliating." The ministry officials took his words seriously and thought they should do something about it.

An effort of the ministry to reevaluate legal education soon took place. In March 1999. Four months before the Reform Council started, the Ministry of Education established a conference

¹³ In the fields of natural sciences and engineering, graduate school reform took place in the 1970s.

¹⁴ Under the *Ronbun-hakase* system, it has been also possible to receive a Ph.D. degree without enrollment at a Ph.D. program. Many corporate in-house researchers have received a Ph.D. through this system. Yet, the Ministry of Education recently announced the abolition of the *ronbun hakase* system due to its increasing illegitimacy with compared to American Ph.D.

¹⁵ The professional school system was further developed by the Central Council for Education, and the amendment to the School Education Law was made in 2003. This change was mainly for the introduction of law schools system which provides a three-year course with a Judicial Doctorate (J.D.) degree.

where sixteen law faculty members from elite universities were invited to reevaluate the existing undergraduate law faculty and discuss the possible role of universities in legal training education including the law school system (*hogaku-kyoiku tou no arikata ni kansuru chosa kenkyu kyoryokusha kaigi*, hereafter “the Conference on Legal Education”).¹⁶ A law professor whose university had a representative at the conference explained the purpose of this conference:

The Ministry of Education wants to abolish undergraduate law faculties. That’s the true goal for the conference. But since all the conference members were law professors, they were, of course, against such a goal.

Vulnerability of Law Professors

The Reluctant Majority of Law Scholars

In contrast to those pro-law school scholars, many of the law professors whom I interviewed were reluctant to support the idea of introducing the law school system. Why did so few law professors endorse the law school reform? The scholars who advocated the proposal, with the exception of Sato, were not specialists in the core courses in the faculty of law, the ones tested in the bar exam: civil law, commercial law, criminal law, civil procedure law, criminal procedure law, and constitutional law. In contrast to the pro-law school scholars who had studied in the United States, scholars specializing in the core courses had often studied in France or Germany, countries who provided the models for Japan’s law. Among the core courses, civil law is regarded as the most important subject in the Japanese undergraduate law faculties, whereas constitutional law is seen as essential in American law schools. Among those I interviewed, civil law scholars tended to express stronger resistance to the law school proposal than scholars of other disciplines.¹⁷ They questioned whether the American-style law school system, based on common law, is a good fit with the Japan’s civil law. Since civil law has so many codes, lecturing is more effective than the Socratic method, the question-and-answer technique commonly used in American law schools. As well, many civil law professors were concerned about the feasibility of teaching civil law for one or two years in the new law schools, since civil law is generally taught for three years in their undergraduate faculties. This reduction of teaching time requires changes in pedagogy. Formally, civil law had been taught based on “*Pandekten*,” the system on which Japan’s civil code is written.¹⁸ Yet, under the new regime civil law professors are forced to restructure how and what they teach. One of the civil law scholars said, “If a civil law scholar had served on the Reform Council or the ad hoc committee, the Council may have produced different results.”

Scholars in elite universities were reluctant to endorse the new system, but at the same time it seemed to them a good opportunity to eliminate many lower-status universities:

¹⁶ Conference on Legal Education was held from March 31, 1999 to March 17, 2000.

¹⁷ For example, see Uchida (2005). Furthermore, seven out of nine civil law professors whom I interviewed were opposed to the law school plan.

¹⁸ Some approaches have been made to change the pedagogy of *Pandekten* at undergraduate law programs (e.g. Omura 2001).

Everyone knows that prep schools would not die out after law schools were established. Instead, they might find more business chances, such as providing preparation courses for law schools, the LSAT, and even for the new bar exam. So, destroying prep schools is not the true goal. Elite universities instead see introducing law schools as a good chance to eliminate lower-status universities.

Representatives of elite universities at the Reform Council indeed estimated that only 20 to 30 universities would be able to establish a law school. In interviews, many law professors of elite universities viewed the presence of the large numbers of lower-status law faculties as a threat to the prestige of their profession. Thus, professors at elite schools predicted only elite universities could establish a law school if rigorous requirements were introduced. Lower-status universities would then eventually die out after a shift from law undergraduate faculties to law schools.

Reluctance but Little Opposition from Law Scholars

Despite the fact that many law professors were reluctant to support the introduction of the new law school system, little opposition was heard from them. Daniel Foote, a law professor at the University of Tokyo, mentioned that although many law professors were opposed to the system, they were afraid of challenging the Ministry of Education (2003, 2004). Some law professors whom I interviewed also explained their fear that if their universities opposed the Ministry of Education on this issue, their universities would be discriminated against by the ministry when it awarded grants and approvals for other new departments. Their fear of the Ministry of Education comes from the fact that Japanese universities rely heavily on the ministry financially. Private universities also receive a large portion of their funds, in essence, half of their faculties' salaries, from the ministry.

Opposition and reluctance toward introducing the law school system was often drowned out by the logic of organization. The logic of organization here means that members of an organization view their organization's survival and success as the most important thing of all. The following comment shows that a law professor prioritized the survival of his university over his oppositional view toward the law school proposal:

I personally don't agree with the law school proposal. I see the existing bar exam is a crazy system. Who wants to devote your life to the 2% success? If they wanted to increase the legal population, I thought easing the bar exam must have been an answer. I don't understand why we need law schools. We don't want to do it (creating a law school). But we have no choice. It is really time-consuming and requires us to do lots of administrative jobs. I am now at the mid-stage of my career that I should be the most productive, but I have hardly had time for my research lately.

...Creating a law school is "organizational defense." If we were the only one without a law school among the same ranked universities, it would damage us a lot. A war of recruiting is going on now. In that circumstance, if we don't create a law school, I wonder how many our faculty members would be left. Also, a law school will add to the prestige of the undergraduate law faculty.

A law professor of a non-elite university also explained his university's "no choice" situation:

It would've been better if only five or ten elite universities were allowed to establish a law school. Actually, there was such a rumor at the beginning. But now that the door is open for everyone, we have to do it. If we don't do it, we will lose our faculty as well as prospective students for our undergraduate law faculty. Creating a law school is a matter of life and death for us.

As we see here, many law professors prioritized the logic of organization over their view of the legal education system and academic research. If one university creates a law school, the rest of the universities at the same rank have to create a law school as well. While higher and middle-status universities were desperate for maintaining the power-balance among them, lower-status universities struggled for their survival. The law school proposal was initiated by elite universities, national elite universities in particular. When it became clear that the Reform Council opposed an entry cap for establishing law schools due to the philosophy of deregulation, many other universities quickly responded to the law school movement and proposed their law school plan. As soon as the universities saw that establishing a law school could add prestige to them, they all jumped on the law school train.

Another reason that law professors did not protest against the law school proposal is their weak solidarity compared with other professional occupations, including lawyers and physicians. Such weak solidarity may be true of many other universities, even those outside Japan. University professors are like entrepreneurs; they are less likely to unite and resist external political pressure. Although they rely on their networks for sharing their knowledge and peer evaluation through various associations, unlike lawyers, law professors are not an influential interest group in Japan.

Universities: High Policy Implementability

Japanese universities are embedded in an environment where the Ministry of Education exerts centralized power. Law professors are vulnerable to external pressure due to their low solidarity and tight control by the Ministry. These characteristics indicate that universities in Japan have high policy implementability. Policy implementability means the likelihood that policies would be implemented. Many law professors were reluctant about the law school proposal, but their low solidarity and the Ministry of Education's tight control made them too vulnerable to protest against the proposal. Thus, once the law school proposal was discussed at the national level, it quickly spread the entire field of universities.

Conclusion

In Japan, education has often been used by the government as a means of introducing social change, due to its high policy implementability. The Japanese law school system is a good example to illustrate Japanese universities' high policy implementability because it was introduced when Japan needs numerous talented lawyers to operate a law-governed society. The idea of introducing a

law school system was initiated by some pro-American law professors. They were concerned that no academic institution was responsible for legal professional education in Japan. Soon after, the Ministry of Education jumped at the opportunity. The ministry viewed the law school proposal as a suitable measure for advancing its education reform drive. Law professors, the most relevant stakeholders of the law school system, were reluctant about the law school proposal, but their low solidarity and the Ministry of Education's tight control made them too vulnerable to protest against the proposal. In addition, law professors in elite universities did not proactively oppose the law school proposal because they found it a good chance to crush the large number of lower-status law undergraduate faculties.

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